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REPORT
No. 2437

ATTORNEYS' LIENS

JULY 2, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRYSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2546]

The Committee on the Judiciary, to whom was referred the bill (S. 2546) to provide for attorneys' liens in proceedings before the courts or other departments and agencies of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 3, strike out the figure "10" and insert in lieu thereof the figure "125".

Page 1, line 4, strike out the figure "394" and insert in lieu thereof the figure "1963".

Page 1, line 6, strike out the figure "394a" and insert in lieu thereof the figure "1964".

Page 1, line 8, before the word "That" insert "(a)".

Page 2, line 15, strike out "Sec. 2" and insert in lieu thereof "(b)".

Page 2, line 20, strike out "Sec. 3" and insert in lieu thereof "(c)".

Page 3, line 1, strike out the figure "4" and insert in lieu the figure "2".

Page 3, line 1, strike out the figure "10" and insert in lieu thereof the figure "125".

Page 3, line 2, strike out the word "following" and insert in lieu thereof the word "preceding".

Page 3, line 2, strike out the figure "394" and insert in lieu thereof the figure "1961".

Page 3, line 3, strike out the words "so as to read" and insert in lieu thereof the words "by adding at the end thereof".

Page 3, following line 3, strike out the section heading reading " 'Sec. 394a. Attorney's charging lien in an action or other proceeding.' " and insert in lieu thereof: "1964. Attorneys' charging lien in an action or other proceeding."

AMENDMENTS

The amendments are of a clerical nature only. In drawing up the instant legislation, the 1940 edition of the United States Code was used in citing section numbers. However, title 28 of that code was revised in 1948, and the subject matter of this legislation was set forth under different section numbers. These amendments, therefore, conform to the 1948 code revision and place this legislation in its proper position in the code.

STATEMENT

In many States, attorneys have a charging lien upon a client's cause of action, either at common law or by statute. The purpose of this bill is to insure similar protection for attorneys under Federal law. The Senate report accompanying this bill, Senate Report No. 1445, notes a few important points.

First it states:

> The Federal courts do not recognize a common-law lien in favor of attorneys, but they have given effect to the laws of the States in which such liens may be held (p. 3).

One advantage of S. 2546, as the Senate report points out, would be that the proposed—

> lien would be enforced uniformly by all Federal courts.

More important,

> in the District of Columbia there is at present no lien statute. * * * the bulk of claims against the United States are litigated in that jurisdiction. Unless an attorney's retainer agreement expressly provides that the attorney is to be paid exclusively from the recovery, he has no lien (*Pink* v. *Farrington* (92 F. 2d 465)) * * *. If an attorney is cognizant of this rule and takes this precaution, he shuts himself off from the personal liability of the client (p. 3).

Objection was made by several of the Government agencies that the bill would require the agencies themselves to determine and set the amount of the fee due attorneys. That objection is obviated by the instant bill which provides for enforcement by—

> the court in which that action or proceeding is brought, or the court in which a proceeding for judicial review may be brought if the proceeding be brought before any department or agency of the United States, or if no judicial review of such department or agency action is provided by law, any district court of the United States, shall, upon petition of the client or attorney, determine and enforce such lien.

In addition, the objection is made that the provisions of section 2 of S. 2546 expressly exempts the liens in favor of attorneys from the prohibitions of (1) the Assignment of Claims Act and (2) liens against property vested by the United States. As regards the Assignment of Claims Act, no exemption is in fact needed. The Senate report properly says that—

> Section 2 of S. 2456 is designed, in part, to set at naught the argument that the prohibition against the assignment of claims against the United States (31 U. S. C., sec. 203) would strike down this attorney's lien. The lien in this instance would apparently be exempted from the operations of the Assignment of Claims Act (31 U. S. C., sec. 203) in any event because it would have been created by "operation of law." *Brooks* v. *Mandel-Witte Co.* (54 F. (2d) 922, 955 (C. C. A. 2d, 1932)). But section 2 of this bill expresses this conclusion affirmatively, and thus eliminates any confusion which might otherwise arise (p. 3).

In other words, the statutory lien created by S. 2546 would be exempt by operation of law without an express exemption. The long-standing exemption of assignments by "operation of law" from the Anti-assignment Act was recently reaffirmed in *United States* v. *Aetna Casualty and Surety Co.* (338 U. S. 366, 372–376 (1949)). In effect, then, the agencies opposing this legislation would in fact change the law whereas section 2 is merely declaratory of existing law.

In addition, if a statutory lien is exempt from the sweeping provisions against the assignment of claims against the United States, there is no reason to be more considerate of the prohibition against property seized or vested by the United States. It should be remembered that many of the proceedings now being instituted against the Alien Property Custodian are to reclaim erroneously vested properties, properties upon which the Government, in the interest of expediency during the war, made summary seizures.

Additional argument is made that the Government will become a party to a substantial volume of litigation between attorneys and clients, even in situations wherein the Government has paid one or the other in good faith. If, of course, the Government has paid a client prior to institution of a suit, there is no basis for any claim. If suit, however, has been instituted by the attorney, the Government cannot claim that any payment made thereafter was made "in good faith," for the institution of a suit is notice of the attorney's statutory lien. If the Government desires to pay either client or attorney, it can pay into court and be absolved of all further liability. This was done by the Secretary of the Treasury in *Aron* v. *Snyder* (196 F. (2d) 38). And further, the Government can protect against liability, in the ordinary case, by procuring a waiver from both attorney and client prior to payment.

Another objection is that the enactment of the instant legislation will not only result in delays in making payments to claimants but also will involve the Government in burdensome administrative and accounting difficulties which often result from alleged assignments. The fact, of course, that additional administrative problems may be a byproduct of this legislation is of little weight to the committee in determining the merits of this bill. In addition, it sees no reason for denying attorneys protection because the defendant happens to be the Government rather than a private citizen. While this legislation may result in delay in payments to some claimants, the committee is of the opinion that this objection is, for the most part, more fancied than real and that in the majority of cases there will be little or no trouble. In any event, where recoveries or awards are obtained through the efforts of an attorney, he, no less than any other person, should have his rights protected. This especially so when his labors play the major part in bringing about the recovery.

Further objection is made to the applicability of the bill to any proceeding presently pending. The bill, of course, is intended to supply a Federal lien, a lien which is already existent in many States by virtue of statute or common law. The committee sees no reason to discriminate against attorneys who have presently pending suits. Justice requires that these attorneys, too, be protected for services they have already rendered and will continue to render. In some instances, pending suits have been protracted for as long as 6, 8, or

10 years and no persuasive argument has been submitted as to why such attorneys should be deprived of the protection of the provisions of this Act.

Another argument presented to the committee was that this legislation will create additional delays and expense because the Government agencies charged with determining offsets will have to investigate not only claims that the Government may have against the claimants, but also those it may have against the attorneys. This, however, should be viewed as an advantage to the Government rather than a burden for the presence of an attorney affords additional opportunity to the Government to assert its own claim against him.

It is the opinion of the committee that this bill does not represent an innovation. Instead it corrects a defect or fills in an omission in Federal law. It assures attorneys the protection that they have long enjoyed at common law and now enjoy by statute in many States.

There was some discussion during the full committee's consideration of this legislation as to what constituted an attorney's appearance before an administrative agency. It was pointed out that many Government agencies, by regulation, require the submission of a power of attorney signed by the claimant, before an attorney is permitted to appear for a claimant. In order to avoid future issue on this legislation the committee is agreed that, in the absence of statute or regulation expressly providing for the appearances of attorneys, no attorney at law shall be considered to have entered an appearance in any action or proceeding before any department or agency of the United States until he files a duly executed power of attorney signed by the claimant or his guardian and acknowledged before an officer authorized to administer oaths for general purposes.

For informational purposes the major portion of the Senate report, referred to above, is adopted and incorporated herein, as follows:

The purpose of this bill is to give an attorney at law a lien upon his client's cause of action, claim, or counterclaim, in any Federal court or before any department or agency of the United States, which shall attach to any verdict, report, determination, decision, judgment, or final order in his client's favor, and the proceeds thereof in whatever hands they may come.

PROVISIONS

The provisions of this bill are very similar to section 475 of the Consolidated Laws of New York (N. Y. Judiciary, sec. 475). The only real differences between that statute and this bill are (1) the method of enforcement of the lien; (2) the exemption spelled out in section 2; and (3) section 3 makes this statute applicable to any action or other proceeding which is presently pending or hereafter commenced. The need for section 2 is self-evident. If this bar was not lifted from assignments of claims against the United States or enforcing a lien against property "vested" by the United States, it would be doubtful whether or not the vast majority of administrative practice and suits against the United States would be excluded from the protection of this statute.

The method of enforcement is set out specifically in this proposed legislation while the New York statute merely provides that the court upon petition of the client or attorney may determine and enforce the lien. No mention is made in the New York statute concerning the procedure to be followed if the lien attached as a result of proceedings before a State, municipal, or Federal department. The language used in this bill would place the enforcement of the lien in the hands of the courts.

The last sentence of section 1 of this bill sets forth the method of procedure for enforcing this lien. Either the client or attorney may petition the appropriate court to determine and enforce the lien. The appropriate court is determined by the type of proceeding. Thus the lien that attaches as the result of an action or suit instituted in a court is enforced by that court itself. If the lien attaches

as a result of a proceeding brought before any department or agency of the United States, and judicial review may be had from the decisions of such a department or agency, the court before which judicial review is sought will enforce the lien. If the lien attaches as a result of a proceeding brought before any department or agency of the United States, and no judicial review from such department or agency can be had, any district court of the United States will enforce the lien.

This statute has been made to apply not only to those actions and other proceedings which are commenced after the effective date of this provision but also to those which are presently pending. The New York statute applied only prospectively.

STATEMENT

Historically attorneys at law have had the benefit of two liens. On the one hand a lawyer had a general, retaining or possessory lien; on the other he had a special, particular or charging lien. The retaining lien gave an attorney the right to retain possession of all documents, money, or other property belonging to his client until the general balance due to the lawyer for professional services was paid. This present bill does not in anywise affect the attorney's retaining lien.

The charging lien is an equitable right. It entitles an attorney to the right to be paid the fees and costs due to him as a result of a judgment or recovery in a particular suit. This charging lien was permitted at common law and has been extended in many States by statute (N. Y. Judiciary § 475).

The Federal courts do not recognize a common-law lien in favor of attorneys, but they have given effect to the laws of the States in which such liens may be held (*Webster* v. *Sweat*, 65 F. (2d) 109 (C. C. A. 5th 1933); *Chaucey* v. *Bauer*, 97 F. (2d) 293 (C. C. A. 5th 1938); *Central Railroad & Bkg. Co.* v. *Pettus*, 113 U. S. 116, at p. 127, 5 S. Ct. 387 (1885)).

The proposed legislation would change the law in two material aspects; (1) it would broaden the normal charging lien which the Federal courts have heretofore enforced as part of the law of a particular State; and (2) this lien would be enforced uniformly by all Federal courts. As to this latter aspect it would obviously make no difference henceforth whether the lien was asserted in one Federal district court rather than another. In this connection it should be pointed out that since the language of the New York statute is adopted, except as to the enforcement provisions, the Congress is in effect approving the constructions given to that statute by the New York courts. Those cases would not be binding on the Federal courts, but would of necessity be entitled to great consideration and respect.

In the District of Columbia there is at present no lien statute. However, it should be pointed out that the bulk of claims against the United States are litigated in that jurisdiction. Unless an attorney's retainer agreement expressly provides that the attorney is to be paid exclusively from the recovery, he has no lien. *Pink* v. *Farrington* (92 F. (2d) 465 (App. D. C. 1937).) If an attorney is cognizant of this rule and takes this precaution, he shuts himself off from the personal liability of the client.

Section 2 of S. 2546 is designed, in part, to set at naught the argument that the prohibition against the assignment of claims against the United States (31 U. S. C., sec. 203) would strike down this attorney's lien. The lien in this instance would apparently be exempted from the operations of the Assignment of Claims Act (31 U. S. Sec. 203) in any event, because it would have been created by "operation of law." *Brooks* v. *Mandel-Witte Co.* (54 F. (2d) 922, 955 (C. C. A. 2d, 1932).) But section 2 of this bill expresses this conclusion affirmatively, and thus eliminates any confusion which might otherwise arise.

The remaining portion of section 2 would not prevent an attorney's lien from attaching to property seized or vested by the United States. Thus if, under section 7 (c) of the Trading With the Enemy Act, the United States had vested certain property, section 9 (f) would not prohibit the attorney's lien, herein conferred, from attaching at the commencement of the action.

In recommending that this bill be favorably considered the committee wishes to call attention to the fact that a similar statute has been subjected to detailed scrutiny by the New York courts. The language of this legialation has been fully tried, and it has neither been found wanting as regards the interests of an attorney nor oppressive as regards the interests of a client.

Attached hereto and made a part of this report are communications from the Office of the Attorney General, the Comptroller General of the United States, and the Treasury Department.

JUNE 25, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 6405) to provide for attorneys' liens in proceedings before the courts or other departments and agencies of the United States. The Senate having recently passed a similar bill, S. 2546, which is also with the committee for consideration, the comments of the Department will be directed to both bills.

Both H. R. 6405 and S. 2546 provide that from the commencement of an action, or other proceeding (or the service of an answer containing a counterclaim) in any court or before any department or agency of the United States, an attorney whose appearance has been entered for a party shall have a lien upon his client's cause of action, claim, or counterclaim, which shall attach to any verdict, report, determination, decision, judgment, or final order in his client's favor, and the proceeds thereof in whatever hands they may come. Both bills also provide that no statute forbidding or limiting the assignment of a claim against the United States shall be deemed to apply to a lien thus established. The Senate bill, in addition, provides that no statute forbidding or limiting the creation or enforcement of a lien against property seized or vested by the United States shall be deemed to apply to the attorneys' liens.

With respect to enforcement, the House bill provides that the court, department, agent, or agency entering such final order shall, upon petition of the client or the attorney, determine and enforce such lien. The Senate bill provides that determination and enforcement of the lien shall be made by the court in which the action or proceeding is brought, the court in which judicial review may be had if the proceeding is an administrative one, or any district court of the United States if the proceeding is an administrative one from which there is no judicial review provided by law.

Another important difference between the bills is that the Senate bill provides for the enactment to be applicable to any action or other proceeding presently pending.

Both bills provide for the attorney's lien to attach from the commencement of an action, or other proceeding. Neither of the bills, however, makes it clear that such a lien will be subordinate to counterclaims or set-offs successfully asserted. To illustrate this ambiquity, if an insolvent plaintiff is successful in a claim for $1,000, and the defendant is successful in asserting a counterclaim for $1,500, the lien of the plaintiff's attorney might be held to be superior to the judgment of the successful defendant. Such might be the result irrespective of whether the defendant is a private party or the Government. It would seem that the measure should be clarified in this respect.

The provision in both bills to the effect that the liens created by them shall not be barred by the Assignment of Claims Act, and the provision in the Senate bill providing for the creation or enforcement of liens against property seized or vested by the United States despite section 9 (f) of the Trading With the Enemy Act, would result in the Government becoming embroiled in conflicting claims. One of the purposes of the Assignment of Claims Act was to protect the Government from the necessity of making investigations of alleged assignments of claims against it and from becoming embroiled in the conflicting claims which so often result from such alleged assignments. Likewise, enactment of section 9 (f) of the Trading With the Enemy Act was deemed necessary to protect the Government against the complications and entanglements which would result if liens, attachments, garnishments, etc., were permitted with respect to seized or vested properties. Neither of these statutory enactments should be bypassed in any legislation without due consideration of the reasons which in the first instance prompted their enactment, and of the consequences to be anticipated as a result of making exceptions from their application. In this same connection, it may be expected that the Government will become a party to a substantial volume of litigation between attorneys and clients, even in situations wherein the Government has paid one or the other in good faith. Furthermore, it is considered undesirable to place the executive agencies of the Government in a position where, in addition to the customary determinations incident to administrative proceedings, they must adjudicate rights as between attorneys and clients. H. R. 6405 would create such a condition.

Both bills would advance the charging lien concept well beyond its present horizons by treating administrative negotiations carried on through attorneys

like litigation, and by creating liens upon the claims of clients represented by attorneys in such proceedings. Furthermore, some such proceedings, such as an application for a radio license, do not lend themselves to such liens. Also, it should be noted that delays and expense may be anticipated while the Government agencies charged with determining offsets investigate not only claims that the Government may have against the clients, but also those it may have against the attorneys. It is well established that a debtor with notice, actual or constructive, of an attorney's participation, who pays his creditor may also have to pay the attorney's proper fee, for which he may be sued independently or for which the case may be reopened if a satisfied judgment is involved.

A further result to be anticipated from enactment of either of these measures, is that in a considerable number of actions or proceedings attorneys who would not otherwise be parties will seek leave to intervene to protect their lien interests. This will create additional difficulties and delays in effecting the conclusion of such matters.

Section 3 of S. 2546, making the liens to be created by that bill applicable to any proceeding presently pending as well as hereafter commenced, would require that all agencies of Government discontinue upon enactment of the bill the making of any payments on the basis of verdicts, reports, determinations, decisions, judgments, or final orders thereafter issued or entered on actions or proceedings now pending. This would confuse and tie up thousands of administrative and judicial proceedings which might otherwise be promptly terminated by the making of payments to the partie thereto.

The Department of Justice is unable to recommend enactment of either of these bills.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

JAMES P. MCGRANERY,
Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 3, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. CHAIRMAN: There has come to my attention S. 2546, Eighty-second Congress, entitled "A bill to provide for attorneys' liens in proceedings before the courts or other departments and agencies of the United States," which passed the Senate on May 1, 1952, in amended form, and is at present pending before your committee.

Briefly, and as stated in the report of the Senate Committee on the Judiciary (S. Rep. No. 1445, 82d Cong.) "The purpose of this bill is to give an attorney at law a lien upon his client's cause of action, claim, or counterclaim, in any Federal court or before any department or agency of the United States, which shall attach to any verdict, report, determination, decision, judgment, or final order in his client's favor, and the proceeds thereof is whatever hands they may come."

As passed by the Senate, section 1 of the bill, in language very similar to section 475 of the Consolidated Laws of New York (N. Y. Judiciary, sec. 475), establishes, in broad lien form, the right of an attorney to be paid fees and costs due him as a result of judgment or recovery in a particular action or proceeding in or before any court, department, or agency of the United States. The New York statute makes no mention of procedure to be followed when the lien attaches as a result of proceedings before an agency, although it provides that "The court upon the petition of the client or attorney may determine and enforce the lien." The bill places enforcement in the hands of the courts, as follows:

"* * * The court in which the action or proceeding is brought, or the court in which a proceeding for judicial review may be brought if the proceeding be brought before any department or agency of the United States, or if no judicial review of such department or agency action is provided by law, any district court of the United States, shall, upon petition of the client or attorney, determine and enforce such lien."

The Senate committee report points out that, "since the language of the New York statute is adopted, except as to the enforcement provisions, the Congress is in effect approving the constructions given to that statute by the New York courts. Those cases would not be binding on the Federal courts, but would of necessity be entitled to great consideration and respect."

As you are aware, the General Accounting Office makes direct settlement of hundreds of thousands of claims each year (approximately 400,000 during the fiscal year 1951), and many of the claimants involved are represented by attorneys. Thus, the effect of the enforcement provisions of the bill are of vital concern to this Office from the viewpoint of additional work burdens that may result from their enactment. If, on the one hand, this Office be required to recognize and service liens in the first instance, each claim in which an attorney appears would be complicated by the necessity of considering and determining the attorney's claim before settlement could be made with the claimant. If, on the other hand, this Office be required to observe and service a lien only when there is presented a court order determinative thereof, most complications and consequent additional work would be minimized.

A preliminary survey of the operation of the New York statute, as reflected by cases reported in Consolidated Laws Service, New York, Judiciary Law, section 475, indicates that, to the extent those cases would govern, statutory liens to be created by the bill would become binding without notice and would result in equitable rights which could not be disregarded, but would continue as Government responsibilities, regardless of settlement with claimants, until satisfied ("such lien shall not be affected by any settlement between the parties before or after judgment, final order, or determination"). (*Brooks* v. *Mandel-Witte Co.*, 54 F. 2d 992 (1932), certiorari denied 286 U. S. 559; *Woodbury* v. *Andrew Jergens Co.*, 69 F. 2d 49 (1934); *Smith* v. *Young*, 82 N. Y. S. 2d 30 (1948)); and cases cited therein.

While it seems likely that the provisions of section 1 of the bill are intended to bring about some modification of the New York enforcement procedures, it is not clear, without more, that the mere addition in the bill of directions that certain courts shall enforce the liens in instances of administrative proceedings would relieve the departments and agencies—including the General Accounting Office—of responsibility, even in the absence of court orders, to see that such liens are satisfied. Thus, I am seriously concerned that the lien provisions of S. 2546, if enacted, will result in greatly increasing the work of settling claims in the General Accounting Office by adding, in each instance where a claimant is represented by an attorney, a new party whose rights or privileges must be considered and determined before the case can be finally settled. Undoubtedly many thousands of such cases would be encountered each year and a very considerable additional claims settlement expense would be incurred.

The present language of the bill stipulates that a lien shall attach whenever appearance has been entered by an attorney. Failure to specify just what procedures will constitute an appearance, however, or to authorize the various agencies to continue present (or prescribe new) qualifications governing the practice of attorneys before them and to establish standards for filing and proving the terms of liens—for the protection both of the Government and principal claimants—undoubtedly will cause extensive administrative difficulties and confusion. In order to insure that practical problems attendant upon servicing the attorneys' liens that would result from enactment of the bill will be administered in an efficient manner, without undue delay to the principal claimants, provisions to overcome the serious weakness in these respects appear necessary. At the very least, it is desirable that the bill include a provision requiring that appearance conform to regulation. Individual agencies could be authorized to issue such regulations, and the executive branch could be authorized to issue uniform regulations applicable to all agencies therein if deemed desirable in the interest of consistency.

It is important to note, also, that cases decided under the New York statute regard the liens as equitable assignments taking priority over the general right to apply amounts found due in liquidation of debts, including State and Federal tax liens. (*Application of Peters*, 67 N. Y. S. 2d 305 (1947), modified in other respects, 73 N. E. 2d 560; *Herlihy* v. *Phoenix Assur. Co.*, 83 N. Y. S. 2d 707 (1948); *Reisman* v. *Independence Realty Corp.*, 89 N. Y. S. 2d 763 (1949)); and cases cited therein. Amounts found due claimants in many instances are applied by this Office, often in whole, to liquidate indebtednesses to the United States. The Government would be deprived of this method of recovery to the extent of any attorneys' liens that might be involved. In some cases, this would result in preventing the Government from collecting sums due long before the claimant engaged an attorney.

As a practical matter, I most seriously doubt that attorneys prosecuting claims before Federal agencies would often have occasion or need to enforce the proposed statutory liens against funds in the possession of such agencies. The considerable

expense that would be incurred by this Office and other agencies in establishing adequate procedures to protect the Government in every case therefore could be expected to result in essential benefits to attorneys only in relatively few instances. For that reason, if your committee favorably considers S. 2546, it is suggested that the language thereof might be modified to provide, affirmatively, that, unless or until appropriate court orders may be presented for observance in individual instances, liens attaching in the case of proceedings brought before Federal departments and agencies may be disregarded by such departments and agencies.

I think you will agree that these matters are of such grave concern, not only to the work of the General Accounting Office but to the finances of the Government as a whole, as to warrant the special attention of your committee. Should more detailed information be desired on the work of this Office, it will be furnished on request.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

JUNE 2, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: The Treasury Department urges rejection of S. 2546, a bill to provide for attorneys' liens in proceedings before the courts or other departments and agencies of the United States, which is receiving the consideration of your committee.

Enactment of the bill would disrupt the systematic disbursement of public moneys in payment of ordinary obligations of almost every conceivable type. Enactment would subject the United States to potentail claims for inestimable but certainly prodigious sums of money.

One purpose of the bill is to create statutory liens in favor of attorneys in litigation between private parties in United States courts. In this particular the Treasury Department finds no fault with the proposal.

It is another purpose of the bill to treat the United States like a private party for purposes of the statutory lien in litigation in the courts. In this particular, the Treasury Department finds no fault with the proposal.

It is a further purpose of the bill to treat an administrative proceeding like litigation for purposes of giving rise to the statutory lien. In this particular, the bill is seriously objectionable.

It is yet another purpose of the bill to authorize the partial assignment of claims against the United States without according to the Government the protection ordinarily afforded the debtor by requiring formal notice of the assignment. Mere knowledge on the part of the affected agency that an attorney had been recognized would be sufficient to give rise to the assignment against the United States. In this particular, the bill is seriously objectionable.

In litigation there are three participants, the two litigants and the court itself. For the protection both of litigants and attorneys, the court can and frequently does supervise the final settlement. In this respect, an administrative proceeding is not analogous. Typically, a demand for money by an individual may lead to a controversy with an agency for settlement in an administrative proceeding. The claimant retains a lawyer and the agency ordinarily treats with the lawyer. The matter may be prolonged for years and more than one Government agency may be involved. At various stages successive attorneys may represent the claimant. If the administrative decision is in favor of the claimant, the Government ordinarily can and does promptly make payment to him.

However, if this bill should be enacted, the United States could not prudently make payments to any claimant on account of any kind of transaction if the record showed that at any stage an attorney had been recognized to speak for the claimant unless and until the attorney files a release or unless and until the attorney and client litigate the fee.

Under the terms of the bill the statutory lien comes into being immediately upon the entry of an attorney of record. Exactly what constitutes becoming an attorney of record in an administrative proceeding is a matter of considerable uncertainty. And what constitutes an administrative proceeding for the purposes of

the bill is a matter of vast uncertainty. If the bill should be enacted, it is not impossible that the Bureau of Internal Revenue, for example, would as a matter of prudence be obliged to suspend payments of all tax refunds until the individual records could be examined for appearances of attorneys and until the uncertainties created by the enactment could be resolved, a matter that might require years of litigation.

The Treasury Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

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